



The Comptroller General
of the United States

Washington, D.C. 20548

Handwritten signature: H. H. ...

Decision

Matter of: tg Bauer Associates, Inc.

File: B-228485

Date: December 22, 1987

DIGEST

Protest that awardee proposed materially unbalanced fixed hourly labor rates, in response to solicitation for indefinite quantity, time and materials contract, is denied where there is no evidence of mathematical unbalancing.

DECISION

tg Bauer Associates, Inc., protests the award of a contract to National Systems Management Corporation under request for proposals (RFP) N00019-87-R-0063, issued by the Naval Air Systems Command for logistics, financial, engineering and technical support analysis for its foreign military sales program. The RFP contemplated award of a 1-year (plus 3-option years) indefinite quantity, time and materials contract. Bauer, the incumbent contractor, alleges that National's offer should be rejected as materially unbalanced since its pricing structure overstates the base year price and unrealistically discounts the option years' prices.

We deny the protest.

The solicitation required offerors to submit fixed hourly prices for nine labor categories, ranging from clerical staff to senior engineers and program managers. Each proposed labor rate was to include its own share of wages, overhead, general and administrative expenses and profit. For evaluation purposes, the hourly price for each labor category was to be multiplied by a government-provided estimate of the number of hours of expected use for that category, and the resultant total for each category added together for a total price for the base year and each option year. The award was to be made to the lowest-priced, technically acceptable offer, with price being the determinative factor. Offers were not scored or ranked in relation to others but were categorized as acceptable or not acceptable based on the evaluation factors set forth in the RFP. The total price for award purposes was determined by

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adding option prices to the base price, as provided for in the RFP.

Six offerors submitted proposals in response to the solicitation; two (National and Bauer) were evaluated as acceptable, one as marginal, and three as unacceptable. Best and final offers (BAFO's) were requested from the offerors submitting the one marginal and two acceptable proposals. All three BAFO's were found to be technically acceptable. Evaluation based on price yielded the following (excluding the third low offeror):

	<u>Bauer</u>	<u>National</u>
Base Year	\$ 557,604	\$ 580,192
1st Option	636,884	644,684
2nd Option	660,301	646,167
3rd Option	<u>674,832</u>	<u>647,706</u>
Total	\$2,529,621	\$2,518,749

The base year used a total estimate of 24,970 labor hours spread among nine categories, with each option year using a total estimate of 28,110 labor hours similarly disbursed. The labor rates for each category submitted by Bauer and National were reviewed and found to be reasonable. Award was made to National, as the lowest-priced, technically acceptable offeror.

Bauer alleges that National's proposal should have been rejected as materially unbalanced since it overstated the base year labor rates and unrealistically discounted the option years' rates "with the intent to substitute personnel . . . less qualified or experienced than those bid." Bauer's argument is based on the fact that National chose to use relatively stable rates for each labor category over the base and option years, whereas Bauer's general pattern was to start with lower rates in the base year and increase the rates each year thereafter. Bauer also argues that National will not comply with RFP Clause H-10, "Evaluation of Compensation for Professional Employees," which requires compensation plans for professional employees that reflect a clear understanding of the work to be performed and indicate a capability to obtain and keep suitably qualified personnel to meet the solicitation's requirements.

Although the concept of unbalancing generally applies to a sealed bidding situation, it also may apply to negotiated procurements where, as here, cost or price constitutes a primary basis for source selection. See generally Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 C.P.D. ¶ 259.

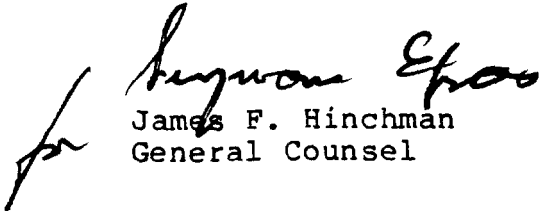
An offer is materially unbalanced where: (1) it is mathematically unbalanced in that each item does not carry its share of the cost of work, or is based on nominal prices for some of the work, and enhanced prices for other work; and (2) award based on the mathematically unbalanced offer will not result in the lowest overall cost to the government. Semcor, Inc., B-227050, Aug. 20, 1987, 87-2 C.P.D. ¶ 185.

We do not find National's offer mathematically unbalanced. From our review of the record, we find no basis to object to the Navy's position that National's pricing structure was reasonable with each labor rate carrying its proportionate share of the total price; that there are no nominal rates for some labor categories nor overstated rates for others; and that there is no front-loading of the offer in that radically higher rates are charged for the base year with much lower rates for the option years. Instead, National has used relatively stable rates throughout the 4 years. National's stable rates are only slightly different from Bauer's increasing rates. Bauer's base year price is approximately 3.9 percent lower than National's with Bauer's third option year price approximately 4.02 percent higher than National's. Given our conclusion that National's offer is not mathematically unbalanced, there is no basis to find the offer materially unbalanced.

Bauer's real concern appears to be that National will not perform the contract with the qualified personnel whose resumes are included in its proposal. As the Navy points out, this relates to National's responsibility as a prospective contractor. See Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 C.P.D. ¶ 621. By awarding the contract to National, the contracting officer has determined National to be responsible. Our Office will not object to the contracting officer's affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Neither is applicable here. Also, to the extent Bauer is concerned that the National will not perform in accordance with Clause H-10, "Evaluation of Compensation for Professional Employees," of the RFP, we note that this argument

relates to contract administration which is not for review
by our Office. See Martin Advertising Agency, Inc.,
B-225437, Mar. 13, 1987, 87-1 C.P.D.
¶ 285.

The protest is denied.

for
James F. Hinchman
General Counsel